

**MEMORANDUM OF AGREEMENT
BETWEEN THE
SPOKANE TRIBE OF INDIANS
AND
THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGARDING THE
PRELIMINARY ASSESSMENT OF THE
COLUMBIA RIVER, RIVER MILE 597-745**

I. RECITALS

The parties to this Memorandum of Agreement ("MOA") are the Spokane Tribe of Indians ("Spokane Tribe") and the U.S. Environmental Protection Agency ("EPA") (collectively referred to as "the Parties"). The Spokane Tribe is a sovereign Indian Tribe whose government is recognized by the United States. The Spokane Tribe is also a natural resource trustee under applicable Federal and Tribal law. EPA is the principal federal agency responsible for implementation of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. Section 9601-9675 ("CERCLA"), including conducting preliminary assessments ("PA") of the hazards to public health and the environment which are associated with such release or threatened release of a hazardous substance, pollutant, or contaminant.

The purpose of this MOA is to provide a mechanism for coordination and consultation among the Parties during PA activities conducted at the Columbia River, RM 597-745/Lake Roosevelt site ("the Site") pursuant to CERCLA. This MOA is intended to provide a framework for good faith government-to-government coordination for the CERCLA response activities conducted at the Site, and to ensure that EPA fulfills its responsibility to consult with the Spokane Tribe prior to taking action that may impact their reservation or federally protected resources. It is acknowledged that additional agreements, or amendments to this MOA, may be executed between the Spokane Tribe and EPA to further meet future needs of the Parties at the Site after the PA is completed.

The Parties are engaged in a government-to-government relationship, as elaborated upon in federal Indian policy, Executive Order 12875 (October 26, 1993), and White House Directive dated April 29, 1994, 59 Fed. Reg. 22951 (May 4, 1994). The Spokane Tribe's relationship with EPA was recognized by a Tribal Environmental Agreement ("TEA") between EPA and the Spokane Tribe dated January 9, 1997.

The United States, including EPA, has a trust responsibility to Indian tribes that arises from Indian treaties, statutes, executive orders, and historical relations between the United States and Indian tribes. It is the policy of the United States to consult with tribal governments before taking actions which may affect tribal rights and resources. Therefore, in entering into this MOA and consulting with the Spokane Tribe on PA activities at the Site, EPA is acting on its own behalf in accordance with its trust responsibility.

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The Spokane Tribe is afforded substantially the same treatment as a state in accordance with section 126 of CERCLA, 42 U.S.C. Section 9626, and 40 C.F.R. Section 300.515

EPA views this MOA as furthering a government-to-government relationship between EPA and the Spokane Tribe for the benefit of the United States and its efforts to fulfill its trust obligations to the Tribe while conducting PA activities at the Site

II. Factual Background

In an April 29, 1994 memorandum to the heads of federal executive departments and agencies, President Clinton reiterated the "unique legal relationship" the United States has with Tribal governments under the Constitution, treaties, statutes, and court decisions. The memorandum emphasized that the departments and agencies shall consult, to the greatest extent practicable, and to the extent permitted by law, with Tribal governments prior to taking actions that affect federally recognized Tribal governments. These departments and agencies were directed to assess the impacts of federal activities on Tribal trust resources; remove procedural impediments to working directly and effectively with Tribal governments on activities that affect trust property and/or governmental rights of Tribes; and address specific or unique needs of Tribes. 59 FR 22951; *See also* Exec. Order No. 13,084, 63 FR 27,655 (1998)

By letter dated August 5, 1999, The Colville Confederated Tribes ("CCT") submitted to EPA a Petition pursuant to Section 105(d) of CERCLA, 42 U.S.C. § 9605(d). The petition requested that EPA conduct a Preliminary Assessment of the hazards to public health and the environment which are associated with a release or threatened release of a hazardous substance, pollutant, or contaminant on lands which include the Colville Reservation and the Upper Columbia River Basin from the Canadian Border, southward through Lake Roosevelt, to the Grand Coulee dam, encompassing the water, river- and lake-beds, and banks

On March 9, 2000, EPA met and consulted with the Spokane Tribe regarding the Site. The Spokane Tribe expressed its interest in the CERCLA activity at the Site. EPA advised that it intends to involve the Spokane Tribe throughout the process and welcomes its input.

III. AUTHORITY

EPA enters into this MOA in furtherance of its responsibilities with regard to implementation of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), as amended, 42 U.S.C. Sections 9601 *et. seq.*, including its duties under 42 U.S.C. § 9605(d). The Spokane Tribe enters into this MOA in cooperation with EPA to further governmental responsibilities under CERCLA and other relevant provisions of federal and Tribal law to investigate and conduct preliminary assessments of the hazards to public health and the environment which are associated with a release of a hazardous substance, pollutant, or contaminant

The Spokane Tribe enters into this MOA in furtherance of fulfilling its direct responsibility to the Spokane Tribe and its members to protect the health of all people who work or reside within the exterior boundaries of the Spokane Indian Reservation ("Reservation Population") to protect the quality of the lands, water, and resources that comprise the "Reservation

Environment” and to protect those areas outside of the Reservation boundaries in which the Spokane Tribe has rights and entitlements under federal law. The Spokane Tribe is also a natural resource trustee under applicable Federal and Tribal law, and enters into this MOA in furtherance of its responsibilities to evaluate, and, if appropriate, assert claims for injury to, destruction of, loss of, or loss of use of natural resources, including, but not limited to, the restoration, rehabilitation, replacement, or acquisition of equivalent natural resources and the recovery for lost use and non-use values of injured natural resources. 40 C.F.R. 300.300 *et seq.*

IV. GENERAL TERMS OF AGREEMENT

1. Communication

1.1 Written Communications. Written communications, other than internal communications within the Spokane Tribe or EPA, regarding activities under this MOA shall be sent to the following key contacts:

For the Spokane Tribe:

Mary Verner
Director for Policy
Spokane Tribal Natural Resources Department
P.O. Box 100
Wellpinit, WA 99040

For EPA: Monica Tonel, Site Assessment Manager
US Environmental Protection Agency
1200 Sixth Avenue
Seattle, WA 98101
Mailstop: ECL-115

The Spokane Tribe and EPA will inform each other in writing in the event that a different key contact is designated. Copies of correspondence and associated attachments for any additional parties will be worked out by verbal agreement of the key contacts.

EPA will provide, upon the Tribe’s request, copies of EPA regulations, policies, laws, and guidance directives that are relevant to Superfund activities at the Site.

The Spokane Tribe is responsible for providing EPA with copies of all Tribal ordinances, regulations, policies, and guidance manuals that are relevant to Superfund activities at the Site.

1.2 Meetings

The key contacts will participate in quarterly conference calls on or around the dates of July 15, and October 15 of year 2000, and additional calls as mutually agreed upon. EPA will take the lead in working with the Tribe to set the date and time of each call as well as initiate the call. More frequent calls may be held as needed at the request of any of the parties.

The Tribe will be provided a comment period on the draft PA before the draft PA is released to the public.

At the request of the Tribe, the parties will meet or hold a conference call to discuss any comments provided to EPA by the Tribe on the draft PA Report. This meeting or conference call will occur prior to EPA issuing the final Report. The final report will incorporate and or respond to the Tribe's comments

Prior to issuing EPA's site recommendation, e.g., further investigation under CERCLA or a "No Further Action" determination, EPA will offer to consult formally with the Tribe. The Region 10 Administrator hereby designates the Associate Director of the Office of Environmental Cleanup as the appropriate EPA official to consult directly with the Tribe regarding this site. However, the Tribe reserves its right to meet with officials at higher levels within the federal government regarding the Site.

2. Public Participation.

EPA is responsible for undertaking community relations activities that relate to the Superfund response at the Site, in accordance with CERCLA, the NCP, and EPA policy and guidance. The parties acknowledge the interest of the public in the assessment and evaluation of impacts associated with the release or potential release of hazardous substances to the environment. As such, the parties will coordinate their endeavor to keep the public advised of the progress of the PAs, consistent with applicable law. In furtherance of this, EPA will work through the Tribe in communicating the progress of the PAs to Tribal members or other groups.

3. Confidentiality.

3.1 The Parties agree that sharing information related to the Site will best enable EPA to satisfy its trust and legal obligations and responsibilities to the Tribe while conducting the PA. The Parties intend to exchange information as part of the process of government-to-government consultation concerning response actions at the Site and during the potential development of enforcement actions against potentially responsible parties.

In order to promote meaningful consultation, the parties intend to keep certain information shared under this Agreement confidential and will seek to protect such information from disclosure and discovery through the use of various privileges and exceptions, including but not limited, the attorney-client, deliberative process, and attorney work product privileges. To avoid interference with a potential enforcement proceeding in which the parties have a common interest, the parties will protect from disclosure any law enforcement records exchanged in anticipation of litigation. The parties agree to maintain any and all rights and privileges, to the extent permitted by law, including the Freedom of Information Act, 5 U.S.C. § 552, that may pertain to any shared information

Whenever sharing information deemed confidential, the party shall clearly mark any information to which it asserts a privilege as "Privileged and Confidential Information – Do Not Release Without Authorization." The party receiving information so marked agrees not to release, or allow to be released, such information to a non-party, to the extent permitted by law. The parties

agree that failure to so mark information developed or shared under this Agreement does not preclude the parties from asserting the protections under the Freedom of Information Act or from asserting privileges and exceptions in seeking to protect the information from discovery.

As part of the PA process, EPA will prepare a PA Report for the Site. The Tribe will be provided an opportunity to review the draft PA Report and provide comments to EPA before EPA issues the final PA Report. If the Tribe requests that such comments be withheld from public disclosure, EPA agrees to protect the confidentiality of the comments to the extent permitted by applicable law, including FOIA.

4. Access

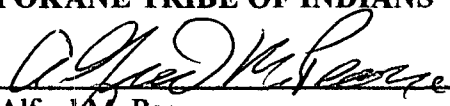
The Tribe acknowledges that EPA has a right of access to the Site under federal laws for CERCLA response activities. In order to facilitate Superfund response activities at any portions of the Site that are under Tribal jurisdiction, the Tribe, in recognition of federal law and not by way of permit, license, agreement, lease or other form of authorization, and solely to the extent of the Tribe's trust beneficiary or other interest in a portion of the site, agree to provide access to the Site to EPA, and to its authorized representatives and contractors, to perform CERCLA response activities authorized by EPA and to the extent required by federal law. The Tribe will be given early notice of EPA visits to the Site, and will be afforded the opportunity to accompany all visits to those portions of the Site that are under Tribal jurisdiction.

5. Amendments

This MOA may be amended, in writing by agreement of the parties, from time to time as necessary to facilitate the goals and purposes of the MOA.

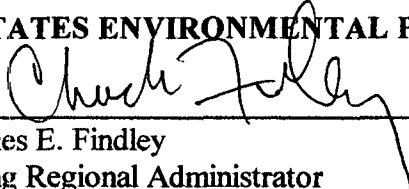
THE UNDERSIGNED PARTIES enter into this Memorandum of Agreement between the Spokane Tribe of Indians and the U.S. Environmental Protection Agency regarding implementation of the Superfund Program.

THE SPOKANE TRIBE OF INDIANS

BY: 
Alfred M. Peone
Chairperson

7-18-00
Date

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BY: 
Charles E. Findley
Acting Regional Administrator

7-24-00
Date